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No. 90-1150

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

DONALD J. WILLY,

Petitioner,

versus

THE COASTAL CORPORATION, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONER DONALD J. WILLY

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QUESTION PRESENTED

Did the district court violate Article III § 2 of the Constitution by awarding attorney's fees, claimed by defendants who wrongly invoked subject-matter jurisdiction by mistakenly removing the case from a state court, as a sanction for asserted bad-faith litigation by the plaintiff, who correctly resisted the unconstitutional exercise of federal judicial power, and who did not impede, obstruct, or delay resolution of any jurisdictional issue?

LIST OF ALL PARTIES

Petitioner Donald J. Willy was the plaintiff in the district court and the appellant in the court of appeals.

Respondents in this Court are the Coastal Corporation, Coastal States Management Company, Inc., James R. Paul, George L. Brundrett, Charles F. Jones, William L. Dunker, and E. C. (Bud) Simpson.

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OPINIONS BELOW

The district court's opinion on the merits is reported. *Willy v. Coastal Corp.*, 647 F. Supp. 116 (S.D. Tex. 1986) (Pet. App. 1). That court's first unreported order awarded attorney's fees of $22,625.00 against Willy and his trial counsel, George A. Young, as a Rule 11 sanction (Pet. App. 6).

The Fifth Circuit's first opinion reversed the district court's decision on the merits for lack of Article III subject-matter jurisdiction, reversed the order awarding attorney's fees, and remanded the case for reconsideration. *Willy v. Coastal Corp.*, 855 F.2d 1160 (5 Cir. 1988) (Pet. App. 9).

The district court's second unreported order awarded attorney's fees of $19,307.00 as a Rule 11 sanction against Willy and Young (Pet. App. 40). The Fifth Circuit's second opinion summarily affirmed that sanction. *Willy v. Coastal Corp.*, 915 F.2d 965 (5 Cir. 1990) (Pet. App. 48).

JURISDICTION

The opinion and judgment of the court of appeals were entered on October 26, 1990 (Pet. App. 48, 56). Willy's timely petition for panel rehearing and suggestion for rehearing en banc were filed on November 14, 1990 and denied on November 27, 1990 (Pet. App. 56). His timely petition for certiorari was filed with the Clerk of this Court on January 17, 1991. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND OTHER PROVISIONS

The relevant provisions of Article III of the Constitution of the United States, Title 28 of the United States Code, and F.R.Civ.P. 11 are reproduced in the appendix to the petition for certiorari, beginning at page 57.

STATEMENT OF THE CASE

Donald J. Willy worked as an in-house environmental attorney for the Coastal Corporation in Houston from 1981 until 1984, when he was fired. In

1985, represented by George A. Young, another Houston lawyer, Willy sued Coastal and others ("Coastal") in a Texas state court. He asserted that the company fired him because of his refusal to falsify environmental reports or to participate in Coastal's criminal concealment of state and federal environmental law violations at several of its facilities. His petition alleged only state causes of action and sought damages and other relief exclusively under Texas law [R. 7: 1096]. None of Willy's claims arose under or was created by a federal statute, and he did not allege entitlement to any federal remedy.[1]

Coastal wrongly removed the case to the United States district court in Houston, mistakenly invoking original federal question jurisdiction under 28 U.S.C. §§ 1331 and 1441(b) [R. 7: 1092, 1093]. After removal, Coastal filed its answer, denying each of Willy's allegations and asserting 14 defenses and a counterclaim [R. 7: 1059].

Young promptly filed a motion to remand on Willy's behalf, correctly contending that no federal question was presented, and that there was no diversity of citizenship or other subject-matter jurisdiction [R. 7: 1049]. Before any supposedly sanctionable misconduct occurred, the district court mistakenly denied the motion to remand [R. 6: 877]. Willy's counsel later twice sought to have the case remanded for lack of subject-matter jurisdiction, without success [R. 4: 469-70; R. 9: 5-6].

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[1] Willy's principal claim was based on *Sabine Pilot Service, Inc. v. Hauck*, 687 S.W.2d 733 (Tex. 1985), which recognizes a cause of action in Texas for termination of employment resulting solely from an employee's refusal to violate the law.

Coastal filed a motion to dismiss Willy's principal state claim, maintaining that the nature of the attorney-client relationship precluded an action for wrongful termination of a lawyer's employment under Texas law [R. 6: 779]. Young filed a reply to Coastal's motion to dismiss [R. 5: 567], a six-page motion for partial summary judgment, supported by Willy's 12-page affidavit, and a 110-page supporting brief [R. 5: 609; R. 6: 744], addressed principally to Coastal's 14 defenses and counterclaim [R. 7: 1059].[2] Young also sought and received permission from the district court to file approximately 1,200 pages of documents in support of his partial summary judgment motion [R 4: 527; R. 5: 565; R. 6: 742; R. 9: 38].[3]

Coastal filed a response to the motion for partial summary judgment, demanding Rule 11 attorney's fees on the grounds that there was "no evidence to support the summary judgment" and that the motion was

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[2] The court of appeals' second opinion mischaracterized the document as "the infamous 110-page summary judgment motion." 915 F.2d at 966 n. 3 and 968 (Pet. App. 49, 54-55). No local court rule imposed a page limitation on the brief.

[3] The documents were produced by Coastal during discovery in an administrative action Willy filed against the company in 1984 with the Wage and Hour Division of the United States Department of Labor. He asserted that the termination of his employment violated the "whistleblower" provisions of several federal environmental statutes. See *In re Willy*, 831 F.2d 545 (5 Cir. 1987). That proceeding is pending before the Secretary of Labor.

The lower courts criticized the documents because they were unnumbered, unindexed, and unorganized (Pet. App. 7, 36, 41), but their filing violated no statute or rule imposing specific requirements in that regard.

"unwarranted" and wholly inadequate" [R. 4: 544]. Coastal also filed a supplemental response and brief supporting its request for sanctions, setting out what it regarded as inappropriate behavior by Young, and attributing his actions to Willy [R. 4: 485; 512]. Although no discovery was undertaken, only two potentially dispositive motions were filed, and less than two hours of hearings were held, Coastal represented that its attorney's fees and costs exceeded $85,000.00 [R. 4: 427].

In its reported memorandum and order, the district court declined to reexamine its subject-matter jurisdiction, rejected Willy's principal state law claim on its merits, and granted Coastal's motion to dismiss the remainder of the case. *Willy v. Coastal Corp.*, 647 F. Supp. 116 (S.D. Tex. 1986) (Pet. App. 1).[4] In an unreported order, the court awarded attorney's fees of $22,625.00 to Coastal against Willy and Young, jointly and severally, as a Rule 11 sanction (Pet. App. 6). The order sanctioned Willy for Young's filing of the motion for partial summary judgment, the 110-page supporting brief, the 1,200 pages of documents that the district court granted permission for Young to file, and another brief misciting a provision of the Federal Rules of Evidence [R. 5: 567, 572].[5] Although Willy did not sign these pleadings, the order held him personally responsible for

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[4] The court of appeals' second opinion mistakenly stated that the district court granted Coastal's motion "for dismissal of the federal claims," 915 F.2d at 966 (Pet. App. 49). As the first panel correctly held, Willy asserted no federal claims.

[5] The district court also criticized Willy's 12-page affidavit supporting the motion for partial summary judgment, believing that the affidavit failed properly to authenticate the 1,200 pages of documents (Pet. App. 7).

them, and for all of Young's other supposed misconduct.

Willy filed in the Fifth Circuit a motion to stay the sanctions order pending appeal, on the grounds that Young had been hospitalized in a Minnesota alcohol and drug abuse treatment facility. The court of appeals denied the stay [R. 3: 290-91].

Willy discharged Young, retained his present counsel, and appealed. The Fifth Circuit ruled that the district court lacked subject-matter jurisdiction, reversed its mistaken decision on the merits, and directed that Willy's claims be remanded to the state court from which Coastal had wrongly removed them almost three years earlier. *Willy v. Coastal Corp.*, 855 F.2d 1160 (5 Cir. 1988) (Pet. App. 9, 10). The panel also reversed the Rule 11 sanctions order, stating that "we and the district court retain jurisdiction over the Rule 11 aspect of this case, even though we have held that removal was improper," 855 F.2d at 1172 (Pet. App. 35), and remanded the case for reconsideration in light of the intervening en banc decision in *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866 (5 Cir. 1988) (Pet. App. 37, 38).[6]

On remand, Willy argued that awarding attorney's

[6] The first panel cited two cases, in which sanctions were sought for wrongful removal, to support its position that federal courts without subject-matter jurisdiction are empowered to award attorney's fees to defendants wrongly removing cases from state courts. *Vatican Shrimp Co., Inc. v. Solis*, 820 F.2d 674 (5 Cir. 1987), *cert. denied* 484 U.S. 953 (1987); *News-Texan, Inc. v. City of Garland*, 814 F.2d 216 (5 Cir. 1987). Willy maintained that the decisions do not establish or even suggest that proposition. The second panel thought that "this conclusion is implicit in their broader holding." 915 F.2d at 967 n. 6 (Pet. App. 52).

fees to defendants who wrongly removed the case, against a plaintiff who successfully contested subject-matter jurisdiction, was inconsistent with Rule 11 and would violate Article III of the Constitution [R. 2: 189]. The district court held a hearing, severed the sanctions issues, remanded the remainder of the case to the state trial court from which Coastal had improvidently removed it 39 months earlier, and awarded $19,307.00 in attorney's fees to Coastal as a Rule 11 sanction against Willy and Young, jointly and severally [R. 11: 2-4] (Pet. App. 40). Willy's timely motion under F.R.Civ.P. 59, reurging his argument that Article III foreclosed the award of attorney's fees, was denied without opinion [R. 1: 5; 2: 57].[7]

The Fifth Circuit summarily affirmed the attorney's fee award, holding that "Rule 11 must embrace the conduct of those who resist, as well as those who invoke, federal jurisdiction," in order to effectuate goals of deterrence and punishment. *Willy v. Coastal Corp.*, 915 F.2d. 965, 967 (Pet. App. 48, 52). The court's opinion attributed to "Plaintiff" or "Willy" additional acts of

[7] Willy filed a motion to stay the second sanctions order pending appeal, asserting in an accompanying affidavit that he had assets worth less than $21,000.00 [R. 2: 63, 66]. Coastal did not contest that figure but instead argued that a stay should be denied because Willy had not shown his inability to borrow the money [R. 2: 24, 27-28]. Attached to Willy's application for stay were extracts from Coastal's 1988 annual report, establishing that the company and its operating subsidiaries in that year had revenues of more than $8 billion, profits of more than $718 million, net earnings of more than $157 million, and total assets of almost $8 billion, resources approximately 400,000 times greater than Willy's [R. 2: 69-75]. The district court denied the stay without opinion [R. 1: 6]. Young elected not to appeal the second sanctions order.

purported misconduct by Young, set out in the second sanctions order, that had not been specifically mentioned in the first order almost four years earlier.[8]

The panel believed that the district court possessed inherent power to award attorney's fees to Coastal as a Rule 11 sanction against Willy, even though the court never possessed Article III subject-matter jurisdiction over the controversy at any stage of the proceeding, and even though Coastal, rather than Willy, wrongly invoked federal jurisdiction. The panel opinion analogized this case to *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. ___, 110 S.Ct. 2447, 2456, 110 L.Ed.2d 359, 376 (1990), thinking it involved, not "a judgment on the merits of an action," but rather, like the imposition of costs,

[8] The alleged, previously unremarked violations were (i) Young's inclusion in a pleading of irrelevant and inflammatory allegations that had been stricken; (ii) Young's filing of responses to Coastal's motion to dismiss that were "confusing, misleading, and not reasonably based on law or fact"; (iii) Young's allegation in a pleading that Coastal's counsel were engaged in an improper conflict of interest; (iv) Young's misquotation in a pleading of a Texas disciplinary rule; (v) Young's statement in open court that he intended to depose no less than 60 individuals in connection with the case; and (vi) Young's filing on Willy's behalf of a separate federal civil action "in an effort to harass Defendants in this case" (Pet. App. 43, 44).

Young filed the supposedly "baseless RICO claims against eighty Coastal officers and employees," 915 F.2d at 968 (Pet. App 55), in a different case. The complaint was never served on any defendant, and the federal judge in that case did not impose Rule 11 or other sanctions.

The Fifth Circuit mistakenly asserted that Willy "[used] the discovery process to harass opposing parties," 915 F.2d at 966 n. 3 and 967 (Pet. App. 49, 52). In reality, the district court stayed discovery pending its ruling on Coastal's motion to dismiss [R. 4: 527].

attorney's fees, and contempt sanctions, "the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate." 915 F.2d at 967 (Pet. App. 51).[9]

The court of appeals also believed that awarding attorney's fees against Willy was not foreclosed by the defendants' wrongful removal of the action. Finding a colorable basis for the district court's mistaken rejection of Willy's jurisdictional position, and that Coastal acted in good faith, the panel reasoned that *Cooter & Gell* permits litigants and lawyers wrongly invoking federal jurisdiction to recover attorney's fees under a federal court's inherent power, even though the derelictions and award relate only to the merits of a controversy the court was never constitutionally empowered by Article III or by Congress to decide in the first place. 915 F.2d at 967 and n. 7 (Pet. App. 52).

Finally, affirming the broad discretion that *Cooter & Gell* accords to federal trial judges under Rule 11, the Fifth Circuit found no abuse of discretion in this case. The panel condemned "reams of irrelevant and

[9] The panel acknowledged Willy's argument that *Cooter & Gell* is not controlling because the Rule 11 attorney's fee award there was collateral to an Article III controversy over which the federal court properly exercised subject-matter jurisdiction, invoked by the sanctioned attorneys, even though they dismissed the case under F.R.Civ.P. 41(a) before the sanctions were imposed. Here, by contrast, the federal court never possessed Article III subject-matter jurisdiction at any stage of the proceedings, and Willy, the sanctioned party, did not invoke such jurisdiction but instead repeatedly and successfully contested it. Nonetheless, the court found *Cooter & Gell's* "discussion of the collateral character of Rule 11 orders applicable in this context as well." 915 F.2d at 967 n. 5 (Pet. App. 51).

unorganized material," 915 F.2d at 966-67 n. 3 (Pet. App. 49), without mentioning that the district court granted permission for Young's filing of the documents, or that Coastal produced them. The panel also did not disclose that virtually all of the supposed misbehavior attributed to Willy personally by its opinion and the district court's order had been committed by his lawyer, or that the revised order awarded attorney's fees for purported misconduct never specifically mentioned in the first order 29 months earlier. The court mistakenly stated that the first panel affirmed the original sanctions order when it actually reversed it.[10] It summarily ratified the district court's implicit determination that the substantial award favoring the defendants was appropriate and reasonable, as required by Rule 11, and was the "least severe sanction adequate to [serve] the purpose" of the Rule. *Thomas v. Capital Security Services, Inc.*, 836 F.2d 866, 878 (5 Cir. 1988) (en banc). Willy's petition for panel rehearing and suggestion for rehearing en banc were denied without opinion (Pet. App. 56).

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[10] The first panel nullified the original sanctions order. "The sanctions order is therefore reversed and the matter of sanctions is remanded to the district court for further proceedings consistent with this opinion and *Thomas*." 855 F.2d at 1173 (Pet. App. 38). The panel's judgment recited that the sanctions order "is set aside" [R. 3: 224]. Nevertheless, the second panel held that the first panel "affirmed the award of Rule 11 sanctions," 915 F.2d at 966 (Pet. App. 49). Concluding that "we are bound by our prior decision affirming the district court's award of sanctions against both Willy and his attorney," 915 F.2d at 968 (Pet. App. 54), the court declined for that reason to consider or decide five issues presented by Willy's brief. Although Willy's petition for panel rehearing and suggestion for rehearing en banc pointed out the error, the Fifth Circuit refused to correct it.

SUMMARY OF THE ARGUMENT

1. Article III of the Constitution limits the judicial power of the United States to cases and controversies over which Congress has conferred subject-matter jurisdiction. Absent congressional authorization, or interference with the determination of its jurisdiction, a federal court has no inherent power to award relief in a case over which it is constitutionally powerless to act. "If there were no jurisdiction, there was no power to do anything but to strike the case from the docket." *The Mayor v. Cooper*, 6 Wall. 247, 250 (1868).

2. In cases within their Article III subject-matter jurisdiction, federal courts possess an inherent power to award attorney's fees and costs for bad-faith litigation. *Chambers v. NASCO, Inc.*, ___ U. S. ___ (1991) [59 U.S.L.W. 4595, June 6, 1991]. That power, implicit in the Constitution, is necessary to attain the ends for which Congress created lower federal courts: to determine reliably, as courts of limited jurisdiction, that they are empowered to act, to resolve cases or controversies defined by Article III and by statute, and to assure the just, speedy, and inexpensive determination of federal judicial proceedings.

Even in the absence of subject-matter jurisdiction, federal courts must have a coextensive, functionally equivalent inherent power to award attorney's fees and costs against those who unreasonably or in bad faith impede, obstruct, or delay the eventual determination that subject-matter jurisdiction is lacking, or who willfully violate orders entered to preserve the *status quo* until jurisdictional questions are resolved. A federal court has jurisdiction to determine its own jurisdiction, apart from statute or the constraints of Article III. It properly may

regard strategic concealment of jurisdictional defects, calculated obstruction of preliminary jurisdictional determinations, or willful violation of orders necessary to permit orderly resolution of questions relating to its constitutional power to act as an interference with the performance of a judicial responsibility consigned to it by the Constitution. *United States v. United Mine Workers*, 330 U.S. 258, 290-92 & n. 57 (1947); *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79 (1988). Awarding attorney's fees and costs as a sanction in such cases reasonably promotes necessary, constitutionally indispensable objectives. *United States v. Hudson*, 7 Cranch 32 (1812).

3. Independently of subject-matter jurisdiction or an Article III case or controversy, federal courts possess inherently a limited, defensive criminal contempt power to punish by fine or imprisonment deliberate disruptions of judicial proceedings, willful disregard of lawful court rules and orders, or other calculated misconduct affecting the performance of judicial duties. *United States v. Providence Journal Co.*, 485 U.S. 693, 701-02 (1988). Criminal contempt penalties are different in principle from civil sanctions, because they serve entirely different ends.

A federal court's inherent authority to award attorney's fees, costs, or civil contempt penalties as a sanction for bad-faith misconduct arises from the character and circumstances of the case before the court. That authority is determined by the claims and defenses asserted, the residence of the parties, or other jurisdictional facts bringing the controversy within the judicial power conferred by Article III and by Congress.

In contrast, criminal contempt punishment promotes no compensatory or private interests, does not necessarily implicate subject-matter jurisdiction, and does not depend on the character of the proceedings under consideration. Criminal contempt power is not derived from Article III's specification of the kinds of cases or controversies federal courts properly may hear and decide, but from an inherent right of self-protection the federal judiciary necessarily must have if it is to function effectively.

4. This case does not involve interference with jurisdictional determinations or criminal contempt sanctions. The narrow question presented also does not require consideration of very different, substantially more difficult issues involving a federal court's asserted power, either inherently or by a rule of procedure, to award attorney's fees as a sanction against those who wrongly invoke subject-matter jurisdiction. Resolution of those much broader, potentially more troublesome problems is not necessary to the disposition of this case, and should be left to a controversy that squarely presents them. *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-48 (1936) (concurring opinion of Justice Brandeis); *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 90 (1982) (concurring opinion of Justice Rehnquist).

5. Willy and his trial counsel did not wrongly invoke federal subject-matter jurisdiction, and they did not impede, obstruct, or delay the eventual determination that jurisdiction did not exist. They repeatedly, correctly, and in a procedurally appropriate manner contested the court's constitutional competence to hear and decide their case. Their purported improprieties related only to

the merits of a dispute that the court was constitutionally powerless to decide, at every stage of the proceeding.

Coastal's asserted good faith in removing the action, the district court's presumptive good faith in hearing it, and the purportedly colorable jurisdiction exercised in deciding it are irrelevant. The judicial power of the United States is not determined by the good intentions of litigants or judges, or by claims that supposedly seem to confer subject-matter jurisdiction, but in reality do not. In a case otherwise beyond its constitutional authority, a federal court does not empower itself to award attorney's fees by incorrectly resolving a jurisdictional issue. The Constitution and Congress determine which cases lower federal courts may hear and decide, not judges.

Federal courts are not helpless to deal effectively with misbehavior arising during their mistaken consideration of the merits of cases beyond their subject-matter jurisdiction. They can dismiss or remand the case. They can suspend, disbar, or sanction incompetent or irresponsible lawyers. They can reprimand offenders or, as a last resort, impose criminal contempt sanctions. But they are not authorized by statute, rule, or constitutional necessity to compensate litigants who mistakenly precipitate a futile and unconstitutional waste of judicial time and resources.

The district court was never empowered by the Constitution or by Congress to deal with this controversy. It lacked the constitutional authority to award attorney's fees, to those who wrongly removed the case, for asserted misconduct relating only to the merits of unconstitutional litigation and not to jurisdictional issues. Because that sanction violated Article III, the district court's unconstitutional order, and the judgment of the

court of appeals mistakenly affirming it, should be reversed.

ARGUMENT

The district court violated Article III § 2 of the Constitution by awarding attorney's fees, claimed by defendants who wrongly invoked subject-matter jurisdiction by mistakenly removing the case from a state court, as a sanction for asserted bad-faith litigation by the plaintiff, who correctly resisted the unconstitutional exercise of federal judicial power, and who did not impede, obstruct, or delay resolution of any jurisdictional issue.

Federal courts possess the inherent power to award attorney's fees and costs for bad-faith litigation in Article III cases and controversies over which Congress has conferred the constitutional competence to act. They possess a coextensive inherent power, functionally equivalent to that existing in cases actually within their constitutional and statutory authority, to award attorney's fees and costs as a sanction for obstruction of a jurisdictional determination. Apart from Article III and the case-or-controversy requirement, they exercise an inherent, defensive criminal contempt power to protect themselves, their judicial proceedings, and their lawful orders from calculated harm, disruption, or disobedience.

What federal courts do not have is an inherent power to award attorney's fees or costs to those wrongly invoking their subject-matter jurisdiction, against those correctly resisting an unconstitutional exercise of federal judicial power, without obstructing the eventual determination that jurisdiction is lacking. Such an award violates Article III of the Constitution. The contrary holdings below substantially undermine this Court's

uncompromising historical insistence that the federal judiciary must scrupulously observe, and confine itself within, the jurisdictional constraints prescribed by the Constitution and by Congress.

1. Absent congressional authorization, or obstruction of a jurisdictional determination, a United States district court cannot impose attorney's fees or costs as a sanction in a case it has no constitutional power to decide.

In plain, simple language, Article III of the Constitution limits the judicial power of the United States to particularly described cases or controversies. Since *Marbury v. Madison*, 1 Cranch 137 (1803), this Court's decisions often have stressed the principle that questions of federal court jurisdiction present constitutional issues, not simply procedural problems to be decided by resort to expediency, in whatever fashion best serves efficient judicial administration, institutional convenience, or the personal preferences of individual judges. Federal courts do not create their own subject-matter jurisdiction. The Court's decisions repeatedly have underscored the simple but profoundly important proposition that federal courts are courts of limited jurisdiction, confined by Article III of the Constitution and by the legislation of Congress.[11] The Court has adhered rigorously to the view that limitations on federal jurisdiction "must be neither disregarded nor evaded," *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978), because permitting lower federal courts to act beyond constitutional and legislative constraints would invade the

[11] *E.g., Karcher v. May*, 484 U.S. 72, 77 (1987); *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 701-02 (1982); *Aldinger v. Howard*, 427 U.S. 1, 15 (1976).

province reserved to state courts by the Constitution.[12] "Due regard for the rightful independence of state governments . . . requires that [federal courts] scrupulously confine their own jurisdiction to the precise limits which [Congress] has defined." *Healy v. Ratta*, 292 U.S. 263, 270 (1934); *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 212 (1971).[13]

Congress did not empower the federal district court to act in this case. A statute purporting to confer such competence would have violated Article III. The case arose exclusively under state law, there was no federal question, and there was no diversity of citizenship.

Congress also did not authorize the award of attorney's fees or costs to defendants wrongly invoking federal subject-matter jurisdiction, against a plaintiff properly resisting its unconstitutional exercise. Under the

[12] "Let it be remembered, also, for just now we may be in some danger of forgetting it, that questions of jurisdiction were questions of power as between the United States and the several States." Curtis, Notice of the Death of Chief Justice Taney, Proceedings in Circuit Court of the United States for the First Circuit 9 (1864).

[13] "For that reason, every federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review'." *Bender v. Williamsport Area School District*, 475 U.S. 534, 541 (1986), quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934). When a lower federal court lacks subject-matter jurisdiction, the Supreme Court reviews the case "not [on] the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." *United States v. Corrick*, 298 U.S. 435, 440 (1936). *Cf.* Supreme Court Rule 14.1(i) ("If review of a judgment of a United States court of appeals is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance").

necessary and proper clause of the Constitution, Art. 1 § 8, and the broad legislative authority conferred by Article III § 1 to create and determine the jurisdiction and other powers of lower federal courts, Congress undoubtedly has a constitutional prerogative to provide for recovery of attorney's fees and costs against those wrongly invoking federal subject-matter jurisdiction, even in cases outside Article III. *Hanna v. Plumer*, 380 U.S. 460, 471-72 (1965); *Sibbach v Wilson & Co., Inc.*, 312 U.S. 1, 9-10 (1941).[14] For obvious reasons, however, Congress has never authorized recovery of fees or costs against parties who prevail on jurisdictional grounds.

Since the Federal Rules of Civil Procedure do not confer subject-matter jurisdiction on federal courts, neither the Rules Enabling Act, 28 U.S.C. § 2072(a), nor F.R.Civ.P. 11 provides a substantive source of judicial power, beyond that conferred by Article III and by Congress.[15] Nor can it be maintained plausibly that a

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[14] See, *e.g.*, 28 U.S.C. § 1919 (authorizing "payment of just costs" in any action or suit dismissed for lack of jurisdiction); 28 U.S.C. § 1447(c) (authorizing attorney's fees and costs for wrongful removal). See also *Mashak v. Hacker*, 303 F.2d 526, 527 (7 Cir. 1962), confirming the congressional power to authorize recovery of costs in the absence of subject-matter jurisdiction.

[15] "These rules shall not be construed to extend or limit the jurisdiction of the United States district courts . . ." F.R.Civ.P. 82. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 370 and n. 7 (1978); *Aldinger v. Howard*, 427 U.S. 1, 8-9 (1976); *Sibbach v. Wilson & Co., Inc.*, 312 U.S. 1, 10 (1941); *cf.* 28 U.S.C. § 2072(b) (Federal Rules of Civil Procedure do not "abridge, enlarge or modify any substantive right"). The lower federal courts in this case, invoking Rule 11 even though the district court never possessed subject-matter jurisdiction at any stage of the proceedings, missed this point. See note 29, *infra*.

federal court's acknowledged collateral authority to award attorney's fees as a sanction in a case that was within its Article III jurisdiction, but that was voluntarily dismissed by the sanctioned parties, as in *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. ___, 110 S.Ct. 2447, 2456, 110 L.Ed.2d 359, 376 (1990), encompasses the entirely different situation in which a federal court was never constitutionally empowered to act, at any stage of the proceedings. Like pendent or ancillary jurisdiction,[16] an exercise of federal judicial power that is collateral to a federal case, as in *Cooter & Gell*, demands some sort of Article III jurisdiction at some point in the controversy. If federal subject-matter jurisdiction never existed, at any stage of the proceedings before the federal court, an award of attorney's fees cannot be deemed collateral to anything that Article III permits the court to decide.

Coastal's claimed entitlement to attorney's fees for asserted bad-faith litigation, apart from an Article III case or controversy, is not in itself "consonant with the exercise of the judicial function in the determination of controversies to which under the Constitution the [federal] judicial power extends." *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 240 (1937). An "interest in attorney's fees is, of course, insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, ___, 110 S. Ct. 1249, 1255, 108 L.Ed.2d 400, 413 (1990), citing *Diamond v. Charles*, 476 U.S. 54, 70-71 (1986). In the absence of statute, or obstruction of the determination of its jurisdiction, a

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[16] *Finley v. United States*, 490 U.S. 545 (1989); *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978); *Aldinger v. Howard*, 427 U.S. 1 (1976); *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

federal court is not constitutionally empowered to adjudicate the quality of a litigant's performance on the merits of unconstitutional litigation, or to award costs or fees merely because a federal judge thinks that might be a good idea.

As with any of its other orders, the validity of a federal court's award of attorney's fees or costs as a sanction for asserted bad-faith litigation, unrelated to interference with or obstruction of a jurisdictional determination, "depends upon that court's having jurisdiction over both the subject-matter and the parties."[17] Without congressional authorization, a federal court lacking Article III subject-matter jurisdiction has no inherent power to order the payment of fines, costs, fees, or expenses of litigation, even against parties wrongly invoking its jurisdiction. "If there were no jurisdiction, there was no power to do anything but to strike the case from the docket."[18] An unconstitutional award of costs or attorney's fees, like an order imposing functionally equivalent civil contempt and statutory penalties, must be

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[17] *Insurance Corp. of Ireland, Ltd. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 701-02 (1982). The Court in *Compagnie Des Bauxites* and other decisions draws a bright line between subject-matter jurisdiction, which implicates Article III concerns, and personal jurisdiction over parties to a federal controversy, which does not. *See, e.g., United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77 (1988); *Omni Capital Internat'l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987).

[18] *The Mayor v. Cooper*, 6 Wall. 247, 250-51 (1868); *Smyth v. Asphalt Belt Ry. Co.*, 267 U.S. 326, 330 (1925); *Lion Bonding & Surety Co. v. Karatz*, 262 U.S. 640, 642 (1923); *Citizens' Bank v. Cannon*, 164 U.S. 319, 324 (1896); *Blacklock v. Small*, 127 U.S. 96, 105 (1888); *Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan*, 111 U.S. 379, 386-87 (1884).

reversed "in its entirety."[19]

It remains a "fair presumption" that federal courts lack the constitutional power to act until the contrary appears.[20] They cannot exercise an inherent power to award costs or attorney's fees, without congressional authorization, against those properly resisting the mistaken exercise of subject-matter jurisdiction, when Article III competence to decide the case never existed at any stage of the litigation. If the district court had correctly determined that it lacked the constitutional authority to decide Willy's case, it would have been empowered to do no more than enter an order promptly remanding the controversy. Denying the power to award fees and costs to federal judges correctly deciding their lack of subject-matter jurisdiction, but conferring it on those who have erred in that determination, "would by the act of the parties [and a federal judge] work a wrongful extension of federal jurisdiction and give district courts power the Congress has denied them." *American Fire & Cas. Co. v. Finn*, 341 U.S. 6, 18 (1951).

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[19] *United States v. United Mine Workers*, 330 U.S. 258, 294-95 (1947) (civil contempt penalties for violation of temporary restraining order); *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76-80 (1988) (civil contempt penalties for resistance to subpoena duces tecum in case over which district court exercised colorable jurisdiction); *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950) (statutory civil penalties).

[20] *Turner v. President, Directors, and Co. of the Bank of North America*, 4 Dall. 8, 11 (1799). "A federal court may not decide cases when it cannot decide cases, and must determine whether it can, before it may." *Cross-Sound Ferry Services, Inc. v. ICC*, 934 F.2d 327, ___ (D.C. Cir. 1991) (dissenting opinion of Judge Thomas).

2. This case does not involve a federal court's inherent power to award attorney's fees and costs for bad-faith litigation within its Article III subject-matter jurisdiction, or for obstruction of a jurisdictional determination.

Federal courts have an established inherent power to award attorney's fees and court costs for bad-faith litigation, in cases they hear and decide under Article III, pursuant to a congressional grant of subject-matter jurisdiction.[21] "The inherent powers of federal courts are those which 'are necessary to the exercise of all others'." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980), citing *United States v. Hudson*, 7 Cranch 32, 34 (1812). Inherent power under Article III "is not a broad reservoir . . ., ready at an imperial hand, but a limited source; an implied power squeezed from the need to make the court function."[22]

Even in cases beyond the judicial power conferred by Article III, federal courts historically have exercised an inherent, functionally equivalent power to adjudicate questions relating to their subject-matter jurisdiction, to punish disruptions of or interference with those jurisdictional determinations, and to sanction willful

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[21] *Chambers v. NASCO, Inc.*, ___ U. S. ___ (1991) [59 U.S.L.W. 4595, June 6, 1991]; *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 258-59 (1975); *Hall v. Cole*, 412 U.S. 1, 5 (1973); *F.D. Rich Co., Inc. v. United States ex rel. Industrial Lumber Co., Inc.*, 417 U.S. 116, 129 (1974); *Link v. Wabash R. Co.*, 370 U.S. 626 (1962).

[22] *NASCO, Inc. v. Calcasieu Television and Radio, Inc.*, 894 F.2d 696, 702 (5 Cir. 1990), *aff'd sub nom. Chambers v. NASCO, Inc.*, ___ U.S. ___ (1991) [59 U.S.L.W. 4595, June 6, 1991], citing *Roadway Express v. Piper*, *Link v. Wabash R. Co.*, and *United States v. Hudson.*

disobedience of court orders designed to enable resolution of subject-matter jurisdictional questions to be undertaken in an orderly, unhurried, procedurally appropriate manner.[23] With or without a congressional grant of subject-matter jurisdiction, binding federal court orders may be issued "as necessary for the court to determine and rule upon its own jurisdiction, including jurisdiction over the subject matter." *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79 (1988). The same considerations reinforce the authority of Congress, consistently with the sweeping legislative power over lower federal courts conferred by the necessary and proper clause and by Article III § 1 of the Constitution, to provide by statute for recovery of costs and attorney's fees against those wrongly invoking federal jurisdiction. *Sibbach v. Wilson & Co., Inc.*, 312 U.S. 1, 9-10 (1941).

A constitutional necessity, in the sense contemplated by *United States v. Hudson*, 7 Cranch 32 (1812), dictates such a result. Litigants and lawyers before a federal court cannot be permitted to impede, obstruct, or delay the orderly resolution of jurisdictional issues, or to gamble on the possibility of escaping responsibility for their actions if the court's power to act on the merits eventually is foreclosed. Jurisdiction to determine jurisdiction logically must implicate precisely those

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[23] *United States v. Shipp*, 203 U.S. 563, 573 (1906); *United States v. United Mine Workers*, 330 U.S. 258, 289-95 (1947); *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79 (1988). "The federal courts have jurisdiction to determine whether they have jurisdiction to hear a case . . ., and therefore have authority to sanction parties for misfeasance connected with the determination of whether jurisdiction exists." *Davis v. Cluet, Peabody & Co.*, 667 F.2d 1371, 1374 n. 8 (11 Cir. 1982).

inherent powers that the court exercises in Article III cases or controversies. Even if a federal court ultimately is determined not to have the constitutional power to decide the case, it still must have the authority to resolve jurisdictional questions, free from identical impositions and distractions that burden the efficient and orderly determination of all other cases on the docket.

Inherent and constitutional powers are interrelated and correlative. In a case within the court's subject-matter jurisdiction, the power to award attorney's fees and costs for bad-faith litigation is essential to preserve the court's authority over a case properly before it for decision. Precisely the same authority logically must extend to obstruction of the court's consideration and determination of jurisdictional issues. Conversely, if the Constitution and Congress never authorized a federal court to act in the first place, at any stage of the proceedings, there can be no conceivable constitutional necessity to award attorney's fees against litigants properly contesting federal subject-matter jurisdiction, in favor of litigants mistakenly invoking it, to compensate them for wrongly inflicting a case on the federal courts. When subject-matter jurisdiction is lacking, and Congress has not authorized recovery of fees or costs, the appropriate course is found, not in Rule 11, or in some supposed inherent power, but in F.R.Civ.P. 12(h)(3)[24] or in 28 U.S.C. § 1447(c).[25]

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[24] "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

[25] "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."

3. A federal court's inherent power to impose criminal contempt sanctions, without statutory authorization or an Article III case or controversy, does not justify awarding attorney's fees to litigants who wrongly invoke subject-matter jurisdiction.

Federal judges always have had an inherent criminal contempt power, necessary to protect themselves, their courts, and all acts incidental to their judicial office from disruption, physical harm, abuse, or obstruction. *Young v. United States ex rel. Vuitton et Fils S. A.*, 481 U.S. 787, 798 (1987); *Michaelson v. United States ex rel. Chicago, St. Paul, Minneapolis & Omaha Ry. Co.*, 266 U.S. 42, 65-66 (1924). Because the necessity for the existence and exercise of such an inherent power is not determined by the character of the case before the court, it is neither subject to the Article III case-or-controversy requirement nor dependent upon statutory authorization by Congress. *United States v. Hudson*, 7 Cranch 32 (1812); *Cooke v. United States*, 267 U.S. 517 (1925).[26]

For example, federal judges conceivably might exercise inherent criminal contempt powers, not only in conjunction with cases over which they lack Article III

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[26] The example of the federal judge punched in the nose during the hearing of a case which is then promptly dismissed, thought by Coastal somehow to be relevant, is not helpful here. *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1076-79 (7 Cir. 1987), *cert. dism'd* 485 U.S. 901 (1988), cited in Respondent's Brief in Opposition to Certiorari at p. 8. It makes good sense to say that a federal judge, assaulted during the course of a judicial proceeding, must have the inherent power, apart from the court's jurisdiction to hear the case, to jail the offender or to impose a substantial fine. It makes no sense to maintain that the judge possesses an inherent power to award attorney's fees or costs for such misbehavior.

subject-matter jurisdiction, but when participating in judicial business that is not a case or controversy at all, such as judicial conferences, investitures, dedications of portraits, naturalization proceedings, and similar ceremonial occasions, whether within or outside of federal courthouses. Inherent criminal contempt powers undoubtedly would reach willful violations of valid court rules and orders that relate, not to the adjudication of individual cases, but to maintaining the physical security, integrity, and decorum of all federal judicial proceedings, such as by prohibiting cameras, recording equipment, cellular telephones, paging devices, or weapons in the courtroom, or by requiring lawyers, litigants, or witnesses to pass through metal detectors at security checkpoints.

The inherent criminal contempt power serves purposes altogether different from those promoted by civil penalties. The power to impose attorney's fees, costs, or civil contempt punishment as a sanction arises from the facts and circumstances of individual cases within the Article III judicial power. There is a necessity for them, in a constitutional sense, because the court is empowered by the Constitution and by Congress to decide the case.

In contrast, criminal contempt penalties promote no compensatory or private interests, and are not dependent on the circumstantial context within which an actual or imminently threatened disruption or obstruction of judicial authority occurs. The inherent criminal contempt power "[serves] to vindicate the jurisdiction and authority of courts to enforce orders and to punish acts of disobedience," *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 450 (1911), to preserve order and decorum in federal courtrooms, and to penalize disruption of those

duties federal judges are constitutionally empowered to undertake by Article III and by Congress. These considerations are irrelevant to the attorney's fees awarded in this case.[27]

4. This case does not require the Court to determine the extent of a federal court's inherent power to impose attorney's fees and costs, in the absence of statute or subject-matter jurisdiction, as a sanction for obstruction of jurisdictional determinations.

This case does not involve interference with a jurisdictional determination or a criminal contempt sanction. The question presented also does not require the Court to determine the sources and scope of a United States district court's authority to award attorney's fees or costs, in the absence of statute or subject-matter jurisdiction. That inquiry presents a number of substantial difficulties. The Court should defer it to another day. *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346-48 (1936) (concurring opinion of Justice Brandeis).[28]

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[27] Accusations of criminal contempt cannot be made or prosecuted by opposing counsel for private parties in civil litigation. *United States v. Providence Journal Co.*, 485 U.S. 693 (1988). They implicate constitutional principles applicable to criminal prosecutions, including the presumption of innocence and the requirement of proof of guilt beyond a reasonable doubt. *Michaelson v. United States ex rel. Chicago, St. Paul, Minneapolis, & Omaha Ry. Co.*, 266 U.S. 42, 66 (1924).

[28] Particularly when Article III problems are presented, "rigorous adherence to the principle that this Court should decide no more of a constitutional question than is absolutely necessary accords with both our decided cases and with sound judicial policy." *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 90 (1982) (concurring opinion of Justice Rehnquist).

1. The Rules Enabling Act empowers this Court "to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts . . ." 28 U.S.C. § 2072(a). The Federal Rules of Civil Procedure by their terms are applicable to "all suits of a civil nature" in the United States district courts, F.R.Civ.P. 1, apply "to civil actions removed to the United States district courts from the state courts," and "govern procedure after removal." F.R.Civ.P. 81(c).

Notwithstanding this unequivocal language, the Rules Enabling Act and F.R.Civ.P. 11 are irrelevant and inapplicable to cases or controversies that a federal court is not constitutionally empowered to decide. Congress undoubtedly did not authorize the Supreme Court to "prescribe general rules of practice and procedure" for unconstitutional litigation. The implicit premise of both the Rules Enabling Act and the Federal Rules of Civil Procedure is that rules of practice and procedure are not necessary for disputes beyond the judicial power conferred by Article III. Such cases must be promptly dismissed or remanded, because to do otherwise would violate the Constitution of the United States.[29]

2. Congress has provided in 28 U.S.C. § 1447(c) for recovery of attorney's fees and costs when a defendant

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[29] Procedural rules governing court administration (for example, barring television cameras or recording devices in federal courtrooms) are authorized, 28 U.S.C. § 2071, because their validity is not dependent on the circumstances of individual cases. In contrast, rules governing pleadings, discovery, motions, hearings, trials, and related matters under § 2072(a) depend for their rational application on subject-matter jurisdiction. The Federal Rules of Civil Procedure explicitly so provide. See note 15, *supra*.

wrongly removes a case over which the federal court lacks subject-matter jurisdiction.[30] In contrast, when a plaintiff's complaint mistakenly invokes subject-matter jurisdiction, Congress in 28 U.S.C. § 1919 has authorized only the recovery of costs. Attorney's fees are not costs, unless Congress explicitly so provides. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 260 (1975) (Congress has not "extended any roving authority to the Judiciary to allow counsel fees as costs or otherwise whenever the courts might deem them warranted"). It is implausible and unreasonable to suggest that Rule 11 or an inherent power authorizes attorney's fees as a sanction for a plaintiff's filing of a jurisdictionally defective complaint, in the face of a statute authorizing only costs when a complaint fails to invoke subject-matter jurisdiction.

3. Lower federal courts have held or implied in *dicta* that, apart from any statutory authority, they can use Rule 11 or an equivalent inherent power to award attorney's fees as a sanction against a jurisdictionally

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[30] Since Congress has authorized attorney's fees and costs for wrongful removal, there is no need to invoke Rule 11 to award them, a point lower federal courts consistently have missed. See, *e.g.*, *Unanue-Casal v. Unanue-Casal*, 898 F.2d 839, 841 (1 Cir. 1990) (attorney's fees sought under Rule 11, in absence of subject-matter jurisdiction, against defendant wrongfully removing case from state court); *S. A. Auto Lube, Inc. v. Jiffy Lube Internat'l, Inc.*, 842 F.2d 946, 947 n. 1 (7 Cir. 1988) (same); *Vatican Shrimp Co., Inc. v. Solis*, 820 F.2d 674, 680 and n. 7 (5 Cir. 1987), *cert. denied* 484 U.S. 953 (1987) (same); *News-Texan, Inc. v. City of Garland*, 814 F.2d 216, 220 and n. 8 (5 Cir. 1987) (same); *Johnson v. Smith*, 630 F. Supp. 1, 4 (N.D. Cal. 1986) (same); see also *Westlake North Property Owners Ass'n v. City of Thousand Oaks*, 915 F.2d 1301, 1303 (9 Cir. 1990) (attorney's fees sought by removing defendants following dismissal on merits; cites and follows *Willy*).

defective complaint or removal petition, on the theory that they are exercising jurisdiction to determine jurisdiction.[31] For example, in *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1078 (7 Cir. 1987), *cert. dism'd* 485 U.S. 901 (1988), followed in *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 495 (3 Cir. 1989), the court thought that a federal trial court could

> engage in all the usual judicial acts, even though it has no power to decide the case on the merits. It may supervise discovery, hold a trial, and order the payment of costs at the end. If the complaint is indeed too silly to create subject matter jurisdiction, attorneys' fees should be an ordinary incident of the award of costs.

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[31] See, e.g., *Chemiakin v. Yefimov*, 932 F.2d 124, 127 (2 Cir. 1991) (cites and purports to follow *Willy* in holding that federal courts "may impose sanctions pursuant to Rule 11," even when they lack subject-matter jurisdiction to adjudicate the merits of a dispute); *Szabo Food Service, Inc. v. Canteen Corp.*, 823 F.2d 1073, 1076-79 (7 Cir. 1987), *cert. dism'd* 485 U.S. 901 (1988) ("silly" complaint or other improper imposition on federal court's time and resources sanctionable as interference with jurisdiction to determine jurisdiction); *Orange Production Credit Ass'n v. Frontline Ventures Ltd.*, 792 F.2d 797, 800 (9 Cir. 1986) (filing of complaint "completely [lacking] a factual foundation for subject matter jurisdiction" sanctionable under Rule 11); *Wojan v. General Motors Corp.*, 851 F.2d 969 (7 Cir. 1988) (plaintiff sought Rule 11 sanctions against defendant for alleged bad-faith concealment of jurisdictional defect) ; *Muthig v. Brant Point Nantucket, Inc.*, 838 F.2d 600, 603 (1 Cir. 1988) (groundless complaint, followed by Rule 41(a) dismissal, sanctionable as misconduct committed during consideration of jurisdiction); *cf. Trohimovich v. Commissioner*, 776 F.2d 873, 875 (9 Cir. 1985) (appeal dismissed for lack of jurisdiction; appellant sanctioned for abusive tactics). See also the wrongful removal cases cited in note 30, *supra*.

This view of the federal judicial power is mistaken. Cases presenting silly complaints or removal petitions that do not invoke subject-matter jurisdiction must be immediately dismissed or remanded, not allowed to roll forward indefinitely while the judge "supervises discovery" or "holds a trial."[32] A federal court abdicating its constitutional responsibility to determine promptly and correctly whether it has the Article III competence to decide the case does not acquire some metaphysical, transcendent authority over the controversy merely by proclaiming it has been doing one thing (determining jurisdiction), when in reality it has been doing something entirely different (deciding the case). A judge's error does not generate the constitutional authority to act. Acceptance of that idea would undermine Article III's historical role as a meaningful, effective limitation on the power of the federal judiciary.

4. Invoking Rule 11 or inherent power as a justification for awarding attorney's fees, in the absence of subject-matter jurisdiction, ignores the circumstance that functionally equivalent civil contempt penalties depend on such jurisdiction:

> It does not follow, of course, that simply because a defendant may be punished for criminal contempt for disobedience of an order later set aside on appeal, that the plaintiff in the action may profit by way of a fine imposed in a simultaneous proceeding for civil contempt based upon a violation of the same order. The right to remedial relief falls

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[32] See *Davis v. Cluet, Peabody & Co.*, 667 F.2d 1371, 1373 (11 Cir. 1982) (federal district court, lacking subject-matter jurisdiction, cannot impose sanction of dismissal on the merits for misconduct unrelated to jurisdictional determination).

> with an injunction which events prove was erroneously issued, . . . *and a fortiorari when the injunction or restraining order was beyond the jurisdiction of the court*.

United States v. United Mine Workers, 330 U.S. 258, 294-95 (1947) (emphasis added).

5. Lower courts sustaining awards of attorneys fees in the absence of statute or subject-matter jurisdiction do not cite this Court's cases denying to federal trial judges the power to award costs without authorization from Congress, note 18, *supra*. They fail to point out that 28 U.S.C. § 1919 allows only costs, not attorney's fees, when a plaintiff's complaint is dismissed for lack of subject-matter jurisdiction. They overlook the circumstance that Rule 11 and the Rules Enabling Act have no rational application in cases beyond the Article III judicial power. They do not even mention, much less address, the constitutional implications of their decisions.

The Court need not and should not attempt to resolve now these broader, more difficult questions. Willy's case presents a much narrower, simpler issue.

5. The district court had no constitutional power to award attorney's fees to defendants wrongly invoking its subject-matter jurisdiction, as a sanction for asserted misconduct relating only to the merits of a case it should never have decided.

In the absence of congressional authorization, the district court awarded attorney's fees to defendants who wrongly invoked its subject-matter jurisdiction, against a plaintiff who properly contested such jurisdiction, and who promoted, rather than impeded or obstructed, the eventual determination that the court lacked the constitutional power to decide the case. The self-

defeating irrationality of that decision is apparent when the inherent power to sanction is viewed in conjunction with related policies underlying F.R.Civ.P. 11.

Rule 11, like the inherent power to award attorney's fees and costs for bad-faith litigation, is designed to streamline federal practice, to discourage legally or factually baseless filings, and to free the federal courts from having to devote scarce judicial time and resources to matters that should not have been brought or pursued. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. ___, 110 S.Ct. 2447, 2456, 110 L.Ed.2d 359, 376 (1990). The baseless filing that initiated this case was Coastal's removal petition. Although they did not prevail in this litigation, the defendants were awarded more than $19,000.00 in attorney's fees for preparing documents, conducting conferences, and attending hearings in a case that never should have been in the federal court in the first place. Far from discouraging the filing of legally or factually baseless complaints or removal petitions, the Fifth Circuit's inversion of Rule 11 actually encourages them.

Coastal's improvident removal of this case delayed its final disposition for years and inflicted significant harm on the federal system and on Willy himself. A wrongful, strategically motivated removal petition compelled an individual with limited financial resources to fight a marathon war of attrition against an $8 billion corporate adversary, over issues having nothing whatever to do with the merits of his case. Willy's state claims still have not been brought to trial, nearly six years after they were properly asserted in a state court.

Recognizing an unprecedented inherent constitutional power to award attorney's fees in this case would make no more sense than a statute authorizing the

recovery of attorney's fees and costs against plaintiffs who succeed in having cases remanded to state court for lack of subject-matter jurisdiction, in favor of defendants wrongly removing them. There is no sound reason in logic or policy for compensating those who mistakenly waste a federal court's valuable time and resources by persuading it to consider and decide a case that is beyond its constitutional province, particularly when other alternatives are available.[33]

The idea of colorable jurisdiction, to which the court of appeals referred in passing, 915 F.2d at 967 n. 7 (Pet. App. 52), has been decisively repudiated by this Court as a source of federal judicial authority. *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72 (1988). Either a federal court has the constitutional power to act, or it does not. If it does not, no purported misconduct of a plaintiff, supposedly colorable claims of defendants, or asserted good faith of a federal trial judge can confer constitutional competence when it does not otherwise exist.[34] A federal court's mistaken determination that it has the constitutional authority to act, when it really does not, cannot spontaneously generate the Article III judicial power to award attorney's fees.

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[33] A federal court has an inherent power to suspend, disbar, or otherwise sanction an irresponsible or incompetent attorney. *Ex parte Burr*, 9 Wheat. 529, 531 (1824); *Ex parte Robinson*, 19 Wall. 505, 512 (1874). The court also can issue oral or written reprimands and, as a last resort, impose criminal contempt sanctions.

[34] *Sosna v. Iowa*, 419 U.S. 393, 398 (1975); *Dred Scott v. Sandford*, 19 How. 393, 402 (1857); *Jackson v. Ashton*, 8 Pet. 148 (1834); *Capron v. Van Noorden*, 2 Cranch 126, 127 (1804).

Willy was not sanctioned for interfering with the district court's determination of its lack of jurisdiction. He was sanctioned for his lawyer's purported misconduct during the district court's unconstitutional exercise of federal judicial power over the merits of his case, against which he repeatedly and properly protested, at every relevant stage of the proceedings. The award of attorney's fees to Coastal violated Article III and seriously compromised the long-standing, firmly entrenched principle of federal constitutional law that the authority to adjudicate cases and controversies must emanate from the Constitution and Congress, not from the mere inclination of a federal judge that having such power might be useful. Judges enjoy no exemption from constitutional restraints. "The courts, no less than the political branches of the government, must respect the limits of their authority." *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77 (1988).

CONCLUSION

The district court's sanctions order, and the judgment of the court of appeals affirming it, are unconstitutional and should be reversed.

Respectfully submitted,

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